

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-221-C - ORDER NO. 2004-466
OCTOBER 5, 2004

IN RE: Rufus Watson, Bay Meadows Homeowners Association,)	ORDER HOLDING
)	DISPOSITION IN
)	ABEYANCE AND
Complainants,)	CREATING GENERIC
)	DOCKET
vs.)	
)	
Horry Telephone Cooperative, Inc.,)	
)	
Respondent.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a complaint filed by Rufus S. Watson, Jr. (“Complainant” or “Mr. Watson”), a member of the Bay Meadows Homeowners Association (“HOA”). By his filing, Mr. Watson complains that Horry Telephone Cooperative, Inc. (“HTC”) is charging unjust and unreasonable rates for telephone service to phones of the HOA located in elevators, at pool-side, and in a pool shed. The Complaint alleges that the practice of charging a business rate for the phones in question is unfair given that the phones in question are rarely, if ever, used. HTC filed a response to Mr. Watson’s Complaint. Thereafter, Mr. Watson requested a formal hearing before the Commission.

By his Complaint, Mr. Watson requests that the Commission (1) find as unjust and unreasonable the business rates charged by HTC for the phones at issue, (2) calculate

the usage of the phones at issue over the last five years, (3) calculate the amount of overcharge for the phones at issue (the alleged overcharge being the difference between the business rate and residential rate), and (4) refund to the HOA the amount of overcharge, including interest. Thus, the basis premise of Mr. Watson's Complaint is a reclassification of the phones at issue from business to residential and a refund to the HOA of the difference between HTC's business rate and residential rate. At the hearing, Mr. Watson requested that the HOA be granted a separate classification for rates due to (1) the phones rarely, if ever, being used and (2) the unique nature of the HOA as a non-profit corporation associated with condominium units used only as permanent dwelling units and not as vacation units.

A hearing was noticed and scheduled before the Commission. The hearing was held on December 17, 2003. The Honorable Mignon Clyburn, Chairman, presided. Mr. Watson appeared pro se at the Hearing and testified in his own behalf. HTC was represented by M. John Bowen, Esquire and Margaret N. Fox, Esquire. HTC presented Brent D. Groome, Chief Executive of Customer Operations for HTC, as its sole witness. The Commission Staff was represented at the hearing by F. David Butler, General Counsel. The Commission Staff did not present witnesses.

Based upon the pleadings and the evidence presented at the hearing, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Watson is a resident (and property owner) of the Bay Meadows condominium complex located in the HTC service area and is a member of the HOA.

2. The HOA is organized as a non-profit corporation.
3. The HOA receives telephone service from HTC for phones in the HOA's elevators and at pool-side.¹
4. The phones in the elevators and at the pool are required by code or regulations for safety reasons. The phones in the elevators are mandated by the Department of Labor, Licensing, and Regulation ("LLR"), and the pool-side phone is required by the South Carolina Department of Health and Environmental Control ("DHEC").
5. The phones in the elevators are toll-restricted² and are rarely, if ever, used. The phone by the pool is toll-restricted, is rarely if ever used, and is programmed so that when the handset is lifted that a call is placed to 911 emergency services.
6. The elevator phones and the pool-side phone are charged as business phones (or business lines) by HTC. Accordingly, HTC charges its approved business-line rate of \$24.00 per line per month for each elevator phone and for the pool-side phone. Additionally, each of these phone lines is charged a monthly Interstate Access Charge of \$9.20.
7. Mr. Watson alleges that the classification of the elevator phones and the pool-side phone as business phones and the resulting charges as business phones is unjust

¹ Mr. Watson's Complaint indicated that the HOA had seven elevator phones, a phone at the pool, and a phone in a locked shed by the pool. At the hearing, counsel for HTC tried to clarify the number of phones. In response to counsel's clarification, Mr. Watson indicated that the phone in the shed had been removed. Therefore, at the time of the hearing, it appears that the HOA has eight phones, seven located in elevators and one at the pool.

² "Toll-restricted" as used herein refers to "toll-blocking." Toll-restricted, or toll-blocking, is a service provided by carriers which allows consumers to elect not to allow the completion of outgoing toll calls from a phone line.

and unreasonable in that the phones are rarely, if ever, used. Further, Mr. Watson contests the imposition of the monthly Interstate Access Charge given that the phones are toll-restricted.

8. The condominiums at Bay Meadows are restricted by deed as dwelling units and are not to be used as rental property for vacationers.

9. Because the HOA is a non-profit corporation and because the units at Bay Meadows are dwelling units and are unlike other condominium properties in the Myrtle Beach area that are time-share units or vacation units rented or leased as vacation properties, Mr. Watson states that Bay Meadows is unique and should be provided a special classification due to the unique nature of Bay Meadows.

10. HTC classifies telephone service based on classifications reflecting the nature or character of use of the service.

11. HTC does not classify its telephone service based on the volume of calls associated with a given phone line.

12. If a phone does not meet the standards for a residential phone as described in HTC's tariff³, then under HTC's classification the phone is charged at the business rate.

³ According to HTC's tariff at Section 2.3.6 (C) "Application of Residence Rates, residence rates apply for:

1. Private residence locations not employing business listings.
2. Private apartments in hotels, clubs, hospitals, and boarding houses where service is confined to the domestic use of the customer and business listings are not employed.
3. The residence of a clergyman or nurse, physician, surgeon, veterinarian or other medical practitioner or certain other professional groups, provided no business designation is employed and the customer does not maintain an office within the residence in which a telephone or jack is located. Titles such as "Dr.", "Rev.", "Judge" and "Professor" are not considered business

13. HTC's tariff provides in part that business rates apply for "... all places of a strictly commercial, professional or business nature." Hearing Exhibit No. 3, § 2.3(B)(1).

14. According to HTC's embedded cost of service study completed by John Staurulakis, Inc. in 2003 for the year end 2002, the cost of service for HTC residential and business telephone lines totals \$46.16.

15. HTC's current end user access line rates under HTC's approved tariff are \$24.00 for a business line and \$13.50 for a residence line.

16. The Interstate Access ("EUCL") Charges are federally-approved charges prescribed by the National Exchange Carrier Association, Inc. ("NECA") and are presently set at \$9.20 for business lines and \$6.50 for residence lines.

17. NECA guidelines provide that the EUCL charge is to be applied to local telephone lines, including toll-restricted lines, because the local loop is required for these services whether the long distance network is accessed or not.

18. HTC expresses concern that, given the nature of the HOA as a non-profit corporation and under the existing language of the HTC tariff, reclassification of the HOA's telephone service from business to residence could impact an estimated one

designations when associated with individual names. If listings of firms or partnerships, etc. or additional listings of persons not residing in the same household are desired, business rates apply.

4. Churches, except where business related operations are conducted under church management (i.e. church sponsored child care operation).

5. Private stable or garage when strictly a part of the customer's domestic establishment.

6. College sorority or fraternity house where members of the sorority or fraternity lodge within the house and order their own individual residence service for their rooms.

7. Secretarial line terminations of residence main service terminating as extension lines on the premises of a telephone answering bureau.

thousand additional access lines in the HTC service area. Further, the ramifications of such a reclassification could impact numerous other local exchange carriers across South Carolina.

CONCLUSIONS OF LAW

1. While the Commission recognizes and understands the positions of both parties to this proceeding, the Commission also recognizes that the ramifications of this single proceeding, involving one customer of HTC and one local exchange carrier, could have tremendous impact not only on HTC and the customers of HTC but on all of the telephone companies and telephone customers in the state.

2. Due to the potential far-reaching impact of the issues in this case, we conclude that the decision in this case should be held in abeyance and that a generic proceeding should be established to address the appropriate rate classification or rate structure for telephone lines located in elevators and for telephone lines located in proximity to swimming pools. We establish this generic proceeding so that the Commission may receive relevant information related to the potential impact of reclassification of these types of telephone lines, i.e. those telephone lines required by regulation or code for safety or emergency use, such as telephone lines required to be located in elevators or in proximity to swimming pools. Relevant information on the reclassification of such telephone lines could include, *inter alia*, information related to reclassifying the telephone lines from business to residential or could include information on a new and separate classification for such telephone lines. Further, the generic docket

should be noticed to the public so that interested and potentially impacted parties, in not only the HTC service area but in other service areas across the state, may participate.

IT IS THEREFORE ORDERED THAT:

1. The decision on the instant Complaint is held in abeyance.
2. A generic docket is established to address the appropriate rate classification or rate structure for telephone lines which are required by code or regulation for safety or emergency use, such as telephone lines located in elevators and in proximity to swimming pools.
3. A public notice of the herein ordered generic docket shall be issued.
4. The parties to the instant docket shall automatically be included as parties to the generic docket.
5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)